IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

Beeman, et al.

Group Art Unit: 2621

Serial No.: 09/938,256

Examiner: Edwards, Patrick

Filed: August 23, 2001

Docket No. 10003835-1

For: **System and Method for Facilitating Image Retrieval**

APPEAL BRIEF UNDER 37 C.F.R. § 1.192

Mail Stop: Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
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Sir:

This Appeal Brief under 37 C.F.R. § 1.192 is submitted in support of the Notice of

Appeal filed April 26, 2005, responding to the Final Office Action mailed January 26, 2005.

It is not believed that extensions of time or fees are required to consider this Appeal

Brief. However, in the event that additional extensions of time are necessary to allow

consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. §1.136(a),

and any fees required therefor are hereby authorized to be charged to Deposit Account No.

08-2025.

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I. Real Party in Interest

The real party in interest is Hewlett-Packard Development Company, LP, a limited partnership established under the laws of the State of Texas and having a principal place of business at 20555 S.H. 249 Houston, TX 77070, U.S.A. (hereinafter "HPDC"). HPDC is a Texas limited partnership and is a wholly-owned affiliate of Hewlett-Packard Company, a Delaware Corporation, headquartered in Palo Alto, CA. The general or managing partner of HPDC is HPQ Holdings, LLC.

II. Related Appeals and Interferences

There are no known related appeals or interferences that will affect or be affected by a decision in this Appeal.

III. Status of Claims

Claims 1 and 3-27 stand finally rejected. No claims have been allowed. The final rejections of claims 1 and 3-27 are appealed.

IV. Status of Amendments

This application was originally filed on August 23, 2001, with twenty (20) claims. In a Response filed September 2, 2004, Applicant amended claims 1 and 3-20, canceled claim 2, and added new claims 21-27. In a Response filed March 28, 2005, Applicant made no changes to the claims.

All of the above-identified amendments have been entered and no other amendments have been made to any of claims 1, and 3-27. The claims in the attached Claims Appendix (see below) reflect the present state of those claims.

V. Summary of Claimed Subject Matter

The claimed inventions are summarized below with reference numerals and references to the written description ("specification") and drawings. All references are shown in the application at least where indicated herein.

Independent claim 1 describes a method for facilitating image retrieval, comprising querying a user as to at least one attribute of an image the user wishes to retrieve by posing a series of explicit questions to the user. Applicant's specification, e.g., page 3, lines 18-19; page 15, line 3 to page 16, line 5; page 18, lines 4-8; and Figure 6B, element 616.

The method of claim 1 further comprises receiving explicit user responses to the posed questions. Applicant's specification, e.g., page 3, line 19; page 16, lines 6-7; and Figure 6B, element 618.

The method of claim 1 further comprises presenting at least one image to the user based upon the user responses. Applicant's specification, e.g., page 3, line 20; page 16, lines 12-16; and Figure 6B, element 624.

Independent claim 11 describes an image retrieval system, comprising means for querying a user as to attributes of an image the user wishes to retrieve by posing a series of explicit questions to the user. Applicant's specification, page 3, lines 21-22; page 9, lines 9-16; page 15, line 3 to page 16, line 5; page 18, lines 4-8; and Figure 6B, element 616.

The system of claim 11 further comprises means for receiving explicit user responses to the questions. Applicant's specification, page 3, line 22; page 9, lines 9-16; page 16, lines 6-7; and Figure 6B, element 618.

The system of claim 11 further comprises means for presenting images to the user based upon the user responses. Applicant's specification, page 3, line 23; page 9, lines 9-16; page 16, lines 12-16; and Figure 6B, element 624.

Independent claim 16 comprises a computer program stored on a computer-readable medium, comprising logic configured to generate and present explicit questions for a user that are designed to elicit responses as to attributes of an image the user wishes to retrieve. Applicant's specification, page 9, lines 9-16; page 15, line 3 to page 16, line 5; page 18, lines 4-8; and Figure 6B, element 616.

The program of claim 16 further comprises logic configured to receive explicit user responses. Applicant's specification, page 9, lines 9-16; page 16, lines 6-7; and Figure 6B, element 618.

The program of claim 16 further comprises logic configured to determine which images may satisfy the user's retrieval wishes. Applicant's specification, page 9, lines 9-16; page 16, lines 12-16; and Figure 6B, element 624.

VI. Grounds of Rejection to be Reviewed on Appeal

The following grounds of rejection are to be reviewed on appeal:

1.   Claims 9, 10, 21, 22, and 24-27 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

2.   Claims 1 and 3-27 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Zhu et al. (U.S. Patent No. 6,345,274) and Kagami et al. (U.S. Patent No. 5,974,422).

VII. Arguments

The Appellant respectfully submits that Applicant's claims are neither indefinite under 35 U.S.C. § 112 nor obvious under 35 U.S.C. § 103, and respectfully requests that the Board of Patent Appeals overturn the final rejections of those claims at least for the reasons discussed below.

A.   Rejections under 35 U.S.C. § 112, Second Paragraph

As is noted above, the Examiner has rejected claims 9, 10, 21, 22, and 24-27 for purportedly being indefinite.

The Examiner argues that claims 9, 21, 24, and 26 recite "prompting the user for keywords or phrases *during an image storage process*" (emphasis added), and that this limitation is indefinite because the claims from which claims 9, 10, 21, 24, and 26 depend (i.e., claims 1, 11, and 16) do not mention an "image storing process." Therefore, it is alleged, claims 9, 21, 24, and 26 lack antecedent basis. The Examiner then explicitly states the following:

> For examination purposes, *the phrase "during an image storing process" will simply be ignored*, and the claims will be examined with respect to the rest of the claimed limitations.
> [Final Office Action, January 26, 2005 (emphasis added)]

1.   "During an Image Storing Process" is Not Indefinite

Regarding the merits of the rejection, Applicant respectfully asserts that the limitation at issue does not lack antecedent basis. As is common practice, claim limitations, such as method or system elements, that are first introduced by the definite article "the" are considered as lacking antecedent basis given that the use of the definite article implies that the claim element has been previously introduced, thereby creating ambiguity as to the meaning of the claim

limitation. Claim elements that are introduced by the indefinite article "a," however, are typically not considered to lack antecedent basis, given that the indefinite article indicates that the recited element is being introduced for the first time.

In the present case, the Examiner specifically points to a limitation of claim 21, which provides: "prompting the user for keywords or phrases during an image storing process". Given that the limitation or element at issue, "image storing process", is introduced by the indefinite article "a" in claim 21, it follows that the Applicant is first introducing this limitation or element in claim 21. Accordingly, no "antecedent basis" is missing or necessary. Applicant notes that it is common to present additional claim limitations or elements in dependent claims in this manner to further define the Applicant's invention. Indeed, this practice is explicitly condoned under 35 U.S.C. § 112, paragraph four.

From the foregoing, it is clear that the limitation or element "image storing process", as it appears in claims 9, 21, 24, and 26, does not lack antecedent basis because it is being *introduced for the first time* in those claims. For at least this reason, Applicant submits that the rejection against claims 9, 21, 24, and 26 lacks merit and should be withdrawn.

2. Improper Treatment of an Explicit Claim Limitation Under MPEP § 2143.03 <u>and</u> Improper Final Status of Rejection

Applicant further objects to the treatment of the limitation at issue, and the claims that contain this limitation. Specifically, irrespective of whether the Examiner believes that a given limitation is indefinite, the Examiner still has a duty to consider the limitation in determining whether the claims are allowable over the prior art. As is provided in the Manual for Patent Examining Procedure (MPEP) Section 2143.03 (emphasis added):

> *A claim limitation which is considered indefinite cannot be disregarded. If a claim is subject to more than one interpretation, at least one of which would*

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render the claim unpatentable over the prior art, the examiner should reject the claim as indefinite under 35 U.S.C. 112, second paragraph (see MPEP § 706.03(d)) and should reject the claim over the prior art based on the interpretation of the claim that renders the prior art applicable. Ex parte *Ionescu,* 222 USPQ 537 (Bd. Pat. App. & Inter. 1984) (Claims on appeal were rejected on indefiniteness grounds only; the rejection was reversed and the case remanded to the examiner for consideration of pertinent prior art.). Compare *In re Wilson,* 424 F.2d 1382, 165 USPQ 494 (CCPA 1970) (if no reasonably definite meaning can be ascribed to certain claim language, the claim is indefinite, not obvious) and *In re Steele,* 305 F.2d 859,134 USPQ 292 (CCPA 1962) (it is improper to rely on speculative assumptions regarding the meaning of a claim and then base a rejection under 35 U.S.C. 103 on these assumptions).

Given the above, the Examiner cannot "simply ignore" an explicit claim limitation that the Examiner considers to be indefinite. **Such treatment of the limitation at issue and the claims that contain it is *per se* improper and constitutes reversible error**. As was noted in Applicant's previous response, the "final" status of the last Office Action should have been withdrawn, and the limitation in question should have been considered. **The Examiner's failure to remove the final status and consider the limitation at issue is likewise *per se* improper and also constitutes reversible error.**

In view of the above-noted impropriety, prosecution should be reopened, and the Examiner should examine claims 9, 21, 24, and 26, and claims 10, 22, 25, and 27 which respectively depend therefrom, as is explicitly required by MPEP § 2143.03.

As a final point, Applicant notes that the alleged indefiniteness is relatively minor in nature. Specifically, the objection to the claim limitation is merely that it was not introduced in an earlier claim. Given this fact, the claim limitation is not so ambiguous so as to make it difficult for the Examiner to understand and evaluate. It therefore appears that the Examiner's reluctance to consider the limitation stemmed from either a lack of prior art teachings to meet the expressed claim limitation or reluctance to conduct a further prior art

search, rather than inability to evaluate the limitation. This further underscores the impropriety of the treatment of the limitation and the claims that contain it.

B.   Rejections Under 35 U.S.C. § 103(a)

As is noted above, claims 1 and 3-27 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Zhu, et al. ("Zhu," U.S. Pat. No. 6,345,274) in view of Kagami, et al. ("Kagami," U.S. Pat. No. 5,974,422). Applicant respectfully traverses this rejection.

As has been acknowledged by the Court of Appeals for the Federal Circuit, the U.S. Patent and Trademark Office ("USPTO") has the burden under section 103 to establish a *prima facie* case of obviousness by showing some objective teaching in the prior art or generally available knowledge of one of ordinary skill in the art that would lead that individual to the claimed invention. *See In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). The Manual of Patent Examining Procedure (MPEP) section 2143 discusses the requirements of a *prima facie* case for obviousness. That section provides as follows:

> To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teaching. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and reasonable expectation of success must be found in the prior art, and not based on applicant's disclosure.

In the present case, (i) the prior art references do not teach or suggest all of the claim limitations, and (ii) there is no suggestion or motivation to make the modifications and combinations suggested in the Office Action. Applicant notes that since the Examiner has

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provided no substantive response to Applicant's arguments regarding the Zhu/Kagami rejection, Applicant contiues to direct all comments to the Examiner's arguments contained in the final Office Action.

1.   The Zhu Disclosure

Zhu discloses a method and program for "subjective image content similarity-based retrieval." Zhu, Patent Title. As is described by Zhu, the Zhu system consists of three functional phases: (i) an image registration phase, (ii) a user preference understanding phase, and (iii) a preference-based image retrieval phase. Zhu, column 5, lines 8-10.

First, in the image registration phase, a set of feature extraction techniques is applied to an image to be stored to extract all of the relevant information, or metadata, needed for representing the image. Zhu, column 5, lines 12-17. The image and its associated representations are then stored in a database. Zhu, column 5, lines 58-61.

Second, in the user preference understanding phase, user preferences are automatically extracted for desired images via user interactions. Zhu, column 6, lines 4-6. In a query-based option, *an image is first selected by the user as a query image.* Next, *images similar to the query image are retrieved using default preferences by using a representation-based similarity measure to identify and retrieve images that are similar to the query image.* Zhu, column 6, lines 8-18.

Third, if the user preference understanding phase provides a candidate set of images that does not meet the user's preference for desired images, the process continues with the preference-based image retrieval phase. Zhu, column 7, lines 57-61. In this phase, user-provided examples and counterexamples are processed in conjunction with the saved candidate set to automatically infer user preferences for the desired response. Zhu, column 7, lines 61-64. In this process, the examples and counterexamples are used to identify representation

components that are used to derive the representations of desired images. Zhu, column 7, line 67 to column 8, line 9.

As can be appreciated from the above, the Zhu system at no point presents a user with a query including explicit questions that are intended to elicit explicit responses that are used to retrieve images for the user. To the contrary, it is the *user* that presents a "query" to the Zhu system in the form of a selected image. The Zhu system then searches for similar images using a representation-based similarity measure that is used to compare content in the "query image" with content of other images.

2. The Kagami Disclosure

Kagami discloses a data processing method and apparatus for supporting analysis judgment. Kagami, Patent Title. As is described by Kagami, the apparatus presents various questions to the user about an object to obtain the user's judgment or opinion of the object. Kagami, column 1, lines 62-65; column 3, lines 1-11. More particularly, the Kagami apparatus is used to obtain the user's appraisal of the object by "kansei," which Kagami describes as an analysis/judgment based upon human sensitivity. Kagami, column 3, lines 1-11; column 1, lines 11-17. Through this process, the user evaluates an object in terms of the user's "fashion sense and preference which is human's ambiguous reactive characteristic for a sense." Kagami, column 1, lines 13-14.

Notably, questions are only presented to the user to obtain the user's opinion as to a given article. No questions are presented to a user for the purpose of retrieving anything, nor does Kagami suggest that questions could be used for such a purpose.

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3. Discussion of the Rejections of Applicant's Claims

Turning to Applicant's claimed inventions, Applicant claims methods and systems that facilitate retrieval of stored images. For example, independent claim 1 recites a method as follows (emphasis added):

> 1. A method for facilitating image retrieval, comprising:
> *querying a user as to at least one attribute of an image* the user wishes to retrieve *by posing a series of explicit questions to the user*;
> receiving explicit user responses to the posed questions; and
> *presenting at least one image to the user based upon the user responses*.

Applicant discusses the claimed inventions, and the applicability (or inapplicability) of Zhu and Kagami in the following.

(a) Zhu Does Not Teach "Querying a User" by Posing "Questions" to a User

The Examiner acknowledged in the final Office Action that Zhu does not disclose querying a user by posing a series of explicit questions to the user. However, the Examiner argued, and apparently maintains, that Zhu poses a query to a user that comprises "implicit questions". In accordance with the Examiner's argument, the supposed "querying" by the Zhu system is tantamount to posing such implicit questions to the user.

Applicant agrees that Zhu does not disclose posing explicit questions to a user. Zhu clearly does not teach or suggest such an action. Equally clear, however, is that Zhu does not pose "implicit questions" to a user. As is described above, the Zhu system *receives* a search query *input by the user*. Specifically, the user selects a "query image," which is received by the Zhu system and is used to locate similar images for the user. Zhu, column 6, lines 8-18. Therefore, contrary to that alleged by the Examiner, *it is the user that queries the system, not*

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the system that queries the user. Accordingly, as a first matter, the Zhu system does not "query" the user at all, whether it be with explicit or "implicit" questions. Instead, only the user submits a query. As a second matter, the search query entered by the user does not comprise any "implicit questions," as is argued in the Office Action. Not only does the Examiner not explain what an "implicit question" is (Applicant knows of no established meaning of that term), but the user-provided search query comprises an *image* that is selected by the user, and nothing more. Therefore, it is clear that Zhu neither queries a user, nor does so by posing "implicit questions" to the user.

(b)   Combination of Zhu and Kagami is Improper

Given the clear fact that Zhu does not pose "implicit questions" to a user, the combination of the teachings of Kagami and those of Zhu is unwarranted. Specifically, because Zhu poses no "implicit questions," there would be no motivation to a person having ordinary skill in the art to replace Zhu's supposed "implicit questions" with Kagami's explicit questions. Indeed, it appears clear that such a person would be motivated *against* such a combination given that the combination, and resultant modification of the Zhu system suggested by the Office Action, would *contradict the very nature of the Zhu system*. Again, the invention that Zhu is describing is a system for retrieving related images based on "subject image content similarity-based retrieval". We know this because that is the *title* of Zhu's patent <u>and</u> the clear focus of the disclosure that follows. As such, the core concept of Zhu's system is that images are retrieved based upon the similarity to the content of an image selected by the user (i.e., the query image) and provided to the system. To simply replace this functionality with a system that poses explicit questions to the user would completely obviate the need for Zhu's system. In view of this, the proposed combination and modification is not proper under 35 U.S.C. § 103.

Given the above, Zhu actually *teaches away* from the modification suggested by the Examiner. As is well established in the law, "[t]here is no suggestion to combine . . . if a reference teaches away from its combination with another source . . . A reference may be said to teach away when, a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant . . ." *Tec Air, Inc. v. Denso Manufacturing Michigan Inc.*, 192 F.3d 1353, 52 USPQ2d 1294 (Fed. Cir. 1999). Even if one did not agree that Zhu teaches away from the modification suggested by the Examiner, it is at least clear that the lack of motivation or suggestion in the prior art to make the suggested modification is evidence that the motivation or suggestion is actually being taken from Applicant's own disclosure. As is well established in the law, such hindsight to the Applicant's own disclosure is *per se* improper. *See Crown Operations International, Ltd. v. Solutia, Inc.*, 289 F.3d 1367, 62 USPQ2d 1917 (Fed. Cir. 2002) (*a determination of obviousness cannot be based on a hindsight combination of components selectively culled from the prior art to fit the parameters of the invention*).

In view of the foregoing, it is clear that Zhu and Kagami do not render Applicant's claims obvious. In specific regard to independent claim 1, Zhu and Kagami do not render obvious "querying a user as to at least one attribute of an image the user wishes to retrieve by posing a series of explicit questions to the user" or "presenting at least one image to the user based upon the user responses". Regarding independent claim 11, Zhu and Kagami do not render obvious "means for querying a user as to attributes of an image the user wishes to retrieve by posing a series of explicit questions to the user" or "means for presenting images to the user based upon the user responses". In regard to independent claim 16, Zhu and Kagami do not render obvious "logic configured to generate and present explicit questions for a user that are designed to elicit responses as to attributes of an image the user wishes to

retrieve" or "logic configured to determine which images may satisfy the user's retrieval wishes".

(c) Dependent Claims

In view of the foregoing, each of Applicant's dependent claims are allowable as a result of their depending from one of claims 1, 11, or 16. Applicant notes, however, that the dependent claims contain further limitations that are also not rendered obvious by Zhu and Kagami. Applicant discusses these claims in the following.

Regarding claim 4, Zhu does not disclose "eliminating potential image matches in response to the received responses". Again, the Zhu system does not query the user at all. It follows that the Zhu system does not eliminate matches in response to any responses received in reply to a posed query. Kagami also does not disclose that limitation.

Regarding claim 5, Kagami does not disclose prompting a user to "explicitly identify an image attrtibue of an image" presented to the user "so as to increase the proficiency with which images are retrieved for the user". As is described above, Kagami describes a system in which user opinions as to objects are collected, not a system that "retrieves images" for the user. Zhu also does not disclose that limitation.

Regarding claim 6, Zhu does not disclose storing image metadata "in response to the user identification" given that Zhu does not store any data "in response" to a user's response to a query posed by the Zhu system. Kagami also does not disclose that limitation.

Regarding claim 7, Kagami does not disclose prompting a user to "identify select images" of the images presented to the user "that each contains an image attribute so as to increase the proficiency with which images are retrieved for the user". Applicant refers back to the comments as to claim 5. Zhu also does not disclose that limitation.

Regarding claim 8, Zhu does not disclose storing image metadata "in response to the user identification". Applicant refers back to the comments as to claim 6. Kagami also does not disclose that limitation.

Regarding claim 12, neither Zhu nor Kagami disclose "means for enabling the user to explicitly identify image attributes of the presented images". In the Zhu system, the user merely identifies an image. The user does not "explicitly" identify an "attribute" of that image. In the Kagami system, the user only comments as to his or her opinion of an object. The user does not "explicitly identify" an "image attribute".

Regarding claim 13, neither Zhu nor Kagami disclose means for storing image metadata "in response to the user identification". Applicant refers back to the comments as to claim 6, and further notes that Kagami does not teach "storing metadata".

Regarding claim 17, Zhu does not disclose logic configured to enable the user to "explicitly identify image attributes of the presented images". Applicant refers back to the comments as to claim 5. Kagami also does not disclose that limitation.

Regarding claim 18, Zhu does not disclose logic configured to store image metadata "in response to the user identification". Applicant refers back to the comments as to claim 6. Kagami also does not disclose that limitation.

Regarding claim 21, neither Zhu nor Kagami discloses "prompting the user for keywords or phrases during an image storing process". The Zhu system merely receives an image selected by a user not "keywords or phrases", and the Kagami system only receives the user's opinions as to objects presented to the user. Moreover, no such information is collected "during an image storing process" in either system. Applicant refers back to the comments under the discussion of the 35 U.S.C. §112 rejections regarding the Examiner's "ignoring" of this explicit limitation.

Regarding claim 22, neither Zhu nor Kagami discloses "storing keywords as metadata in response to receiving keywords or phrases provided by the user" since neither Zhu nor Kagami discloses a system that receives keywords or phrases.

Regarding claim 23, Kagami does not disclose "explicitly selecting a portion of an image presented to the user". Again, the Kagami system only receives the user's opinions as to the objects evaluated by the user. Zhu also does not disclose that limitation.

Regarding claim 24, neither Zhu nor Kagami discloses "means for prompting the user for keywords or phrases during an image storing process". Applicant refers back to the comments regarding claim 21 and the comments regarding the 35 U.S.C. §112 rejection and the Examiner's "ignoring" of this explicit limitation.

Regarding claim 25, neither Zhu nor Kagami discloses "means for storing keywords as metadata in response to receiving keywords or phrases provided by the user" since neither discloses a system that receives keywords or phrases.

Regarding claim 26, neither Zhu nor Kagami discloses "logic configured to prompt the user for keywords or phrases during an image storing process". Applicant refers back to the comments regarding claim 21 and the comments regarding the 35 U.S.C. §112 rejection and the Examiner's "ignoring" of this explicit limitation.

Finally, regarding claim 27, neither Zhu nor Kagami discloses "logic configured to store keywords as metadata in response to receiving keywords or phrases provided by the user" since neither discloses a system that receives keywords or phrases.
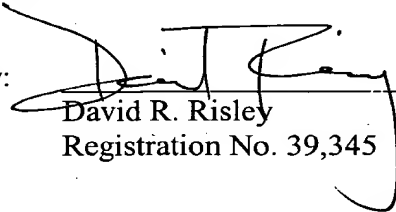
(d)   Summary

In summary, it is Applicant's position that a *prima facie* for obviousness has not been made against Applicant's claims. Therefore, it is respectfully submitted that each of claims 1 and 3-27 is patentable over Zhu and Kagami, and that the rejection of these claims should be withdrawn.

VII. Conclusion

In summary, it is Applicant's position that Applicant's claims are patentable over the applied prior art references and that the rejection of these claims should be withdrawn. Appellant therefore respectfully requests that the Board of Appeals overturn the Examiner's rejection and allow Applicant's pending claims.

Respectfully submitted,

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The following are the claims that are involved in this Appeal.

1.   A method for facilitating image retrieval, comprising:

querying a user as to at least one attribute of an image the user wishes to retrieve by posing a series of explicit questions to the user;

receiving explicit user responses to the posed questions; and

presenting at least one image to the user based upon the user responses.

2.   (Canceled)

3.   The method of claim 1, wherein at least one of the successive questions depends upon the user response given to a previous question.

4.   The method of claim 1, further comprising eliminating potential image matches in response to the received responses.

5.   The method of claim 1, further comprising prompting the user to explicitly identify an image attribute of an image presented to the user so as to increase the proficiency with which images are retrieved for the user.

6.   The method of claim 5, further comprising storing image metadata in response to the user identification, the metadata identifying the image as containing the image attribute that the user identified.

7. The method of claim 1, further comprising prompting the user to identify select images of the images presented to the user that each contains a particular image attribute so as to increase the proficiency with which images are retrieved for the user.

8. The method of claim 7, further comprising storing image metadata in response to the user identification, the metadata identifying the select images as each containing the particular image attribute.

9. The method of claim 1, further comprising analyzing images for a recognizable image attribute during an image storing process.

10. The method of claim 9, further comprising storing image metadata in response to the analyzing, the metadata identifying an analyzed image as containing the recognizable image attribute.

11. An image retrieval system, comprising:

means for querying a user as to attributes of an image the user wishes to retrieve by posing a series of explicit questions to the user;

means for receiving explicit user responses to the questions; and

means for presenting images to the user based upon the user responses.

12. The system of claim 11, further comprising means for enabling the user to explicitly identify image attributes of the presented images.

13. The system of claim 12, further comprising means for storing an image metadata in response to user identification of image attributes, the metadata identifying image as containing the image attributes that the user identified.

14. The system of claim 11, further comprising means for analyzing images for a recognizable image attribute during an image storing process.

15. The system of claim 14, further comprising means for storing image metadata in response to the analyzing of the images, the metadata identifying an analyzed image as containing the recognizable image attribute.

16. A computer program stored on a computer-readable medium, comprising:

logic configured to generate and present explicit questions for a user that are designed to elicit responses as to attributes of an image the user wishes to retrieve;

logic configured to receive explicit user responses; and

logic configured to determine which images may satisfy the user's retrieval wishes.

17. The program of claim 16, further comprising logic configured to enable the user to explicitly identify image attributes of the presented images.

18. The program of claim 17, further comprising logic configured to store image metadata in response to the user identification, the metadata identifying the image as containing the image attribute that the user identified.

19.   The program of claim 16, further comprising logic configured to analyze images for a recognizable image attribute during an image storing process.

20.   The program of claim 19, further comprising logic configured to store image metadata in response to the analyzing of the images, the metadata identifying an analyzed image as containing the recognizable image attribute.

21.   The method of claim 1, further comprising prompting the user for keywords or phrases during an image storing process, the keywords or phrases being relevant to content of an image.

22.   The method of claim 21, further comprising storing keywords as metadata in response to receiving keywords or phrases provided by the user, the metadata identifying the image as containing content described by the keywords or phrases.

23.   The method of claim 5, wherein explicitly identifying at least one image attribute comprises explicitly selecting a portion of an image presented to the user.

24.   The system of claim 11, further comprising means for prompting the user for keywords or phrases during an image storing process, the keywords or phrases being relevant to content of an image.

25.   The system of claim 24, further comprising means for storing keywords as metadata in response to receiving keywords or phrases provided by the user, the metadata identifying the image as containing content described by the keywords or phrases.

26.   The program of claim 16, further comprising logic configured to prompt the user for keywords or phrases during an image storing process, the keywords or phrases being relevant to content of an image.

27.   The program of claim 26, further comprising logic configured to store keywords as metadata in response to keywords or phrases provided by the user, the metadata identifying the image as containing content described by the keywords or phrases.

Evidence Appendix under 37 C.F.R. §41.37(c)(1)(ix)

There is no extrinsic evidence to be considered in this Appeal. Therefore, no evidence is presented in this Appendix.

Related Proceedings Appendix under 37 C.F.R. §41.37(c)(1)(x)

There are no related proceedings to be considered in this Appeal. Therefore, no such proceedings are identified in this Appendix.

PATENT APPLICATION

ATTORNEY DOCKET NO. __10003835-1__
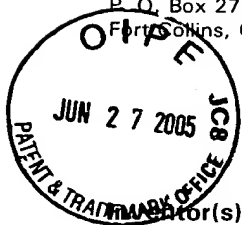
IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s):   Beeman, et al.

Confirmation No.: 1286

Application No.: 09/938,256

Examiner: Edwards, Patrick

Filing Date: 8-23-01

Group Art Unit: 2621

Title: System and Method for Facilitating Image Retrieval

Mail Stop Appeal Brief-Patents
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF

Sir:

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on __4-26-05__ .

The fee for filing this Appeal Brief is (37 CFR 1.17(c)) $500.00.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

( ) (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d)
         for the total number of months checked below:

         ( )   one month $120.00
         ( )   two months $450.00
         ( )   three months $1020.00
         ( )   four months $1590.00

    ( ) The extension fee has already been filled in this application.

(X) (b) Applicant believes that no extension of time is required. However, this conditional petition is
         being made to provide for the possibility that applicant has inadvertently overlooked the need
         for a petition and fee for extension of time.

Please charge to Deposit Account **08-2025** the sum of __$500.00__ . At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees. A duplicate copy of this sheet is enclosed.

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Rev 12/04 (Aplbrief)

Respectfully submitted,

Beeman, et al.

By _____
~David R. Risley, Esq.
Attorney/Agent for Applicant(s)
Reg. No.   **39,345**

Date: **6-22-05**

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